

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) NICOLAS LOPEZ,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
(1) FARMERS INSURANCE COMPANY,)	
INC., a foreign corporation d/b/a)	
Farmers Insurance Group,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant, Farmers Insurance Company, Inc., (hereinafter "Farmers") pursuant to 28 U.S.C. §1441 et seq. in Local Court Rules of the United States District Court for the Western District of Oklahoma, states as follows:

1. The above-styled cause was commenced in the District Court of Oklahoma County, State of Oklahoma and is now pending in that court. Process was served on Farmers by certified mail on the Oklahoma Insurance Commissioner on May 14, 2010. A copy of Plaintiff's Petition setting forth a claim for relief upon which the action is based is attached hereto and marked as Exhibit "1". A copy of the Summons served upon Farmers is attached hereto and marked as Exhibit "2".

2. Plaintiff at all pertinent times to this lawsuit was a resident of Oklahoma County, Oklahoma.

3. Farmers is a foreign corporation doing business in the State of Oklahoma.

4. The amount in controversy is greater than \$75,000. This lawsuit involves a hail damage claim to Plaintiff's roof and resulting interior water damage. Plaintiff seeks a money judgment against Farmers in an amount equal to the actual damages incurred for the repair of the

roof and for damages for Farmers' breach of the duty of good faith and fair dealing. Plaintiff also prays for punitive damages against Farmers and for such additional relief as the Court deems equitable. Plaintiff claims Farmers breached its insurance contract and the implied duty of good faith and fair dealing in connection with his claim for failing to pay him for a new roof and the ensuing interior water damage. According to an estimate submitted by Plaintiff during the claims handling, the cost to replace the roof alone was \$42,010.79. Plaintiff's homeowners policy has a \$466,000 building limit.

Under Oklahoma law, a plaintiff may be awarded, as punitive damages, the greater of actual damages or \$100,000 for breach of the duty of good faith and fair dealing by the plaintiff's insurer. If the jury finds the insurer intentionally and with malice breached its duty of good faith and fair dealing it may award \$500,000 or twice the actual damage. 23 O.S. §9.1 (2003). "[P]unitive damages may be considered in determining the requisite jurisdictional amount." *Woodmen of World Life Ins. Soc. v. Manganaro*, 342 F.3d 1213, 1218 (10th Cir. 2003); *see also Geoffrey E. Macpherson, Ltd. v. Brincell, Inc.*, 98 F.3d 1241, 1244-1245 (10th Cir. 1996). Thus, the amount sought, by Plaintiff, for actual and punitive damages, exceeds the jurisdictional amount of \$75,000, exclusive of interest and costs. Clearly, "it cannot be said 'to a legal certainty that the claim is really for less than the jurisdictional amount'" *Geoffrey E. Macpherson, Ltd.*, 98 F.3d at 1245 (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

5. As a result of diversity of citizenship, and since the amount in controversy exceeds \$75,000, exclusive of interest and costs, this is an action over which the United States District Court for the Western District of Oklahoma has original jurisdiction pursuant to 28 U.S.C. §1332(a).

6. Copies of all process, pleadings and orders served on Farmers to date are attached hereto and have been filed in this Notice.

7. A certified copy of the Oklahoma County docket sheet is attached as Exhibit "3".

EDMONDS COLE LAW FIRM

BY: /s/ Sheila R. Benson

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FARMERS INSURANCE COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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David Smith
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s/ Sheila R. Benson